STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SAN RAMON VALLEY UNIFIED SCHOOL DISTRICT,	)	
Charging Party,	)	Case No. SF-CO-262
v.	)	PERB Order No. IR-46
SAN RAMON VALLEY EDUCATION ASSOCIATION, CTA/NEA,	)	October 12, 1984
Respondent.	)	

Appearances; Gregory J. Dannis, Attorney (Breon, Galgani, Godino, and O'Donnell) for the San Ramon Valley Unified School District; Kirsten L. Zerger, Attorney for the San Ramon Valley Education Association, CTA/NEA.

Before Hesse, Chairperson; Jaeger, Morgenstern, and Burt, Members.

DECISION

JAEGER, Member: This case is before the Public Employment Relations Board (PERB or Board) on a request for injunctive relief filed by the San Ramon Valley Unified School District (District) against the San Ramon Valley Education Association, CTA/NEA (Association). The District filed an unfair practice charge alleging that, by engaging in certain strike activity, the Association violated section 3543.6(a), (c) and (d) of the Educational Employment Relations Act (EERA or Act).*

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[1]The EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all references are to the Government Code.

Section 3543.6 provides, in relevant part:

PERB's authority to seek injunctive relief is governed by section 3541.3(j). That section empowers the Board:

> To bring an action in a court of competent jurisdiction to enforce any of its orders, decisions, or rulings or to enforce the refusal to obey a subpoena. Upon issuance of a complaint charging that any person has engaged in or is engaging in an unfair practice, the board may petition the court for appropriate temporary relief or restraining order.

An injunction is proper in circumstances mandating extraordinary relief. Thus, the charge must not only state a prima facie violation of the Act, but the Board must determine that (1) there is "reasonable cause" to believe that an unfair practice has been committed, and (2) that the relief sought is "just and proper." Public Employment Relations Board v. Modesto City Schools (1982) 136 Cal.App.3d 881, 895.

> It shall be unlawful for an employee organization to:
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> (a) Cause or attempt to cause a public school employer to violate Section 3543.5,
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> . . . . . .
>
> (c) Refuse or fail to meet and negotiate in good faith with a public school employer of any of the employees of which it is the exclusive representative.
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> (d) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3548).

FACTS

The parties' collective bargaining agreement expired on June 30, 1983. Thereafter, the parties engaged in negotiations, but were unable to reach agreement for the 1983-84 school year. On December 11, 1983, the parties jointly requested a declaration of impasse and the appointment of a mediator. PERB granted this request, and the parties participated in mediation sessions through April 1, 1984.

On March 23 and again on March 29, 1984, during the pendency of mediation, the Association engaged in one-day strikes. As a result of this conduct, the District filed an unfair practice charge and a request for injunctive relief (SF-CO-230). The Board granted the District's request and on April 4, 1984 obtained a temporary restraining order that enjoined the Association from engaging in strike activity prior to completion of the statutory impasse procedure.

On May 7 and 11, 1984, the parties participated in factfinding. The factfinding report was issued on May 24, 1984. Both parties agreed to resume negotiations. Thereafter, the parties engaged in nine negotiating sessions, but could not reach agreement.

The District submitted its "last best offer" to the Association on July 10, 1984, and indicated that the governing board was willing to adopt the factfinder's report in full. On July 17, 1984, the governing board adopted the last best offer,

and unilaterally implemented provisions of that offer. At the same meeting, the governing board sunshined its initial proposal for the 1984-85 school year.

On August 7, 1984, the District sunshined the Association's initial proposal for the 1984-85 school year, but insisted that it reserved the right to negotiate outstanding 1983-84 issues which had been unilaterally implemented by the District.

On August 31, 1984, the parties resumed negotiations, in which it appears that both 1983-84 and 1984-85 bargaining subjects were discussed. These negotiations have continued until the present time.

On September 11 and 17, 1984, during the pendency of negotiations, the Association engaged in two unannounced one-day strikes.

On September 19, 1984, the District filed unfair practice charge number SF-CO-262 and a request for injunctive relief, alleging, inter alia, that the work stoppages of September 11 and 17, 1984 constituted a violation of the Association's duty to negotiate in good faith. Specifically, the District alleged that the work stoppages were unlawful economic strikes and, because they were unannounced and of an intermittent nature, constituted unlawful pressure tactics. The District subsequently withdrew its injunction request pending further mediation between the parties.

After the September 17, 1984 strike, the parties resumed negotiations, but made no progress. On September 28, 1984, the

parties, with the assistance of PERB, agreed to the appointment of a special mediator. Since the Board had not declared that an impasse had been reached in negotiations, these mediation sessions were informal and outside the statutory mediation procedure. The parties engaged in these informal mediation sessions until October 5, 1984, when the Association allegedly refused to participate in mediation any longer.

On October 5, 1984, the Association again engaged in an unannounced one-day strike. The District amended charge number SF-CO-262 to allege that the October 5 strike was unlawful. It also reactivated its request for injunctive relief.

On October 8, 1984, the General Counsel determined that charge number SF-CO-262, as amended, stated a prima facie violation, and a complaint was issued.

Throughout this period, the Association has filed a series of unfair practice charges against the District, all of which are now pending before the Board.

In charge number SF-CE-881, filed on March 12, 1984 and amended on August 20, 1984, the Association alleges that the District engaged in the following unfair practices:

1. The District created and negotiated with an "advisory committee" consisting of representatives of various schools, thereby unlawfully bypassing the exclusive representative.

2. On January 24, 1984, the District Superintendent sent a memorandum to District employees which constituted an attempt to bypass the Association and negotiate directly with employees.

3. On February 10, 1984, the District issued a memorandum to District employees which contained an offer that had not been made to Association negotiators and was not made to them until 11 days later.

4. The District required teachers to read District propaganda concerning its position in negotiations, and implied that they would be disciplined for failing to do so.

5. The District engaged in regressive bargaining and condition bargaining, and it unlawfully stated in negotiations that it was bound to pay noncertificated employees the same wage increases granted to certificated employees.

6. A member of the San Ramon Valley School Board published a statement in the local newspaper threatening that the District would refuse to enter into an agreement with the Association unless the Association ceased to exercise its statutory right to file unfair practice charges against it.

7. The District unilaterally implemented its mentor teacher program proposal during post-factfinding negotiations when the parties were making progress towards reaching settlement of that issue.

8. The District violated its duty to negotiate in good faith by unilaterally implementing its last best offer on July 17, 1984. The Association alleges that, due to the past unfair practices committed by the District, no legal impasse had occurred. In addition, the Association alleges that the

District unilaterally adopted policies that, by statute, required the mutual consent of the parties (i.e., binding arbitration, union security, and discipline short of dismissal). Moreover, the District sought to negotiate with the Association through an individual who was not on the Association bargaining team and was associated with a rival employee organization.

In charge number SF-CE-950, filed on September 14, 1984, the Association alleges that the District engaged in the following unfair practices since June 1984:

1. On June 14, 1984, the Association and the District reached a tentative agreement, which was then reneged upon by the District.

2. Since July 17, 1984, when the District unilaterally adopted its last best offer, it has refused to negotiate concerning 1983-84 salary, health and welfare benefits, transfers, class size, and leaves of absence.

3. Since July 17, 1984, the District has engaged in various acts of surface bargaining, condition bargaining, and regressive bargaining which demonstrate subjective bad faith on the part of the District.

4. On three separate occasions, the District prepared and distributed to students letters which were to be taken home to their parents, while the Association is precluded from using the same method of communicating with parents.

5. On August 1 and 7, 1984, letters from Board of Education member McCoy appeared in the "Valley Times" blaming the Association and its negotiator. Chuck Davies, for the stalemate in negotiations.

6. On August 6, 1984, the District distributed a flyer and leaflet to unit members denigrating the Association's choice of Chuck Davies as its chief negotiator.

7. On August 15, 1984, District negotiator Keith Breon terminated an informal mediation session prematurely and without notice.

8. On September 7, 1984, the District distributed a flyer to unit employees announcing a new offer which was more generous than that offered to the Association's bargaining team.

9. On September 13, 1984, District negotiator Breon left in the midst of negotiations without giving notice to the Association. The remaining District negotiators refused to negotiate until Breon returned.

10. The District unilaterally changed its policy concerning the terms on which a teacher could be advanced on the salary schedule.

Complaints have been issued on both charge number SF-CE-881 and SF-CE-950.

It is undisputed that the multiple work stoppages thus far have occurred with little or no notice being given to the District. As a result of the surprise nature of these strikes,

the District has had difficulty obtaining a sufficient number of substitute instructors to carry on its educational mission. The District has also suffered a decline in attendance on strike days attributable to the confusing atmosphere caused by the unannounced work stoppages.

DISCUSSION

The District's primary argument is that an economic strike occurring prior to the completion of the impasse procedure constitutes a refusal to negotiate in good faith. It contends that, since the parties are presently negotiating over "new" bargaining issues for the 1984-85 school year, an entirely new round of negotiations has begun and it is, therefore, unlawful for the Association to engage in economic strikes.

The Association claims that its one-day strikes are unfair practice strikes. In addition, it argues that, even if its strikes are considered to be economic strikes, they occurred after completion of the statutory impasse procedure. Such post-impasse strikes, it contends, are protected under the Act.

In Modesto City Schools (3/8/83) PERB Decision No. 291, the Board dealt extensively with the legality of strikes prior to the completion of the statutory impasse procedure. The Board held that work stoppages which occur prior to the exhaustion of the statutory impasse procedure create a rebuttable presumption that such action is an unlawful tactic in violation of the employee organization's duty to negotiate in good faith.

However, the presumption of unlawfulness may be rebutted by evidence that the strike was provoked by the employer's unfair practices. In such circumstances, the strike would be protected activity under the Act. See also Fresno Unified School District (4/30/82) PERB Decision No. 208; Westminster School District (12/31/82) PERB Decision No. 277; Rio Hondo Community College District (3/8/83) PERB Decision No. 292.

The Board has not yet addressed the legality of strikes which occur after exhaustion of the statutory impasse procedure. Nor has the Board addressed the question, posed in this case, of whether and under what circumstances the parties can be considered to have returned to the Modesto "pre-impasse" stage once they have completed the statutory impasse procedure, failed to reach agreement, and management has unilaterally implemented its last best offer.

There is no question, however, that a strike provoked by an employer's unfair labor practices would be protected at any time at which it occurs in the bargaining process as long as the striking employee organization has not failed to participate in good faith in the statutory impasse procedure. Modesto City Schools, supra, at p. 64. In this case, the Association has filed numerous unfair practice charges against the District, and claims that its strike activity was, at least in part, motivated by the District's unfair labor practices. The District disputes this claim, asserting that the

Association's strike activity was motivated purely by its desire to gain concessions at the bargaining table.

Given the complicated factual record before us, the contradictory claims of the parties, the unsettled state of the law, and the absence of a full evidentiary hearing, we determine that the District has not demonstrated reasonable cause to believe that the Association has committed an unfair practice by engaging in these strikes.[2] Since the requisite present degree of certainty that the strikes violate the Act is lacking, it would not be just and proper to enjoin them. Thus, while the District's unfair practice charge states a prima facie violation, its injunctive relief request does not satisfy the higher "reasonable cause" standard upon which the decision to seek extraordinary relief must be based. PERB v. Modesto City Schools, supra.

However, even where the objective of the strike is lawful, the means used to carry out the strike may be unlawful. Thus, it has long been held under the National Labor Relations Act (NLRA)[3] that sit-down strikes, certain wildcat strikes,

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[2]Thus, the question of whether the Modesto "rebuttable presumption" standard would apply to the facts in this case and, if so, whether the Association could meet that standard in a hearing on the merits is not to be determined by the Board in this injunctive relief request.

[3]The NLRA is codified at 29 U.S.C. 151 et seq. It is appropriate for the Board to take guidance from federal labor law precedent when applicable to public sector labor relations

partial strikes, intermittent strikes, and slowdowns are unprotected. NLRB v. Fansteel Metallurgical Corp. (1939) 306 U.S. 240 [4 LRRM 515]; Confectionery and Tobacco Drivers v. NLRB (2d Cir. 1963) 312 F.2d 108 [52 LRRM 2163]; Valley City Furniture Co. (1954) 110 NLRB 1589 [35 LRRM 1589] enfd (5th Cir. 1956) 230 F.2d 947 [37 LRRM 2740]; NLRB v. Blades Mfg. Corp. (8th Cir. 1965) 344 F.2d 998 [59 LRRM 2210].

Based on this general line of precedent, the District argues that the intermittent nature of the strikes constitutes an unlawful pressure tactic. While the Board has previously held that slowdowns are unprotected (Palos Verdes Peninsula Unified School District (2/26/82) PERB Decision No. 195; Modesto City Schools, supra), it has not directly considered the question of whether partial or intermittent strikes are unlawful. However, the NLRB and federal courts have condemned such work stoppages as unlawful pressure tactics in circumstances where it is found that they represent an attempt by employees to work and strike at the same time. Thus, intermittent or partial strikes are to be distinguished from strikes of short duration, where employees are not attempting to work and strike at the same time. Under the NLRA, strikes of short duration are presumptively protected. See Morris, The

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issues. Fire Fighters Union v. City of Vallejo (1974) 12 Cal.3d 608; San Diego Teachers Association v. Superior Court (1979) 24 Cal.3d 1.

Developing Labor Law, 2d Ed., at pp. 1016-1018; NLRB v. Blades Mfg. Corp., supra; NLRB v. Robinson Industries (9th Cir. 1976) 560 F.2d 396 [93 LRRM 2529]; Downslope Industries (1979) 246 NLRB 948 [103 LRRM 1041]; NLRB v. Lasaponara & Sons, Inc. (2d Cir. 1976) 541 F.2d 992 [93 LRRM 2314].

Because of the unsettled state of the law in this area as well as the lack of record evidence only available through an evidentiary hearing, we do not find that there is reasonable cause warranting extraordinary relief. Nevertheless, we find that such conduct states a prima facie violation of the Act, and should proceed to a hearing.

Next, the District argues that the surprise nature of the strikes constitutes an unlawful pressure tactic warranting injunctive relief. We agree.

In the private sector, with the exception of health care institutions, there is generally no requirement that employee organizations provide notice to an employer of their intention to engage in a work stoppage. However, section 8(g) of the NLRA requires employee organizations which represent employees in the health care industry to provide 10 days' notice prior to engaging in any "strike, picketing, or other concerted refusal to work." Congress amended the NLRA to require prior notice of impending strike activity in the health care industry because it recognized that health care institutions deliver a vital public service and that interruptions of the delivery of health

care services because of labor disputes should be minimized. See NLRB v. Rock Hill Convalescent Center (4th Cir. 1978) 585 F.2d 700 [99 LRRM 3157]; Kapiolani Hospital v. NLRB (9th Cir. 1978) 581 F.2d 230 [99 LRRM 2809]; NLRB v. Long Beach Youth Center (9th Cir. 1979) 591 F.2d 1276 [101 LRRM 2501]; Montefiori Hospital and Medical Center (2d Cir. 1980) 621 F.2d 510 [104 LRRM 2160]; East Chicago Rehabilitation Center v. NLRB (7th Cir. 1983) 710 F.2d 397 [113 LRRM 3241].

We believe that there is a significant public interest at stake in ensuring minimal disruption to the delivery of educational services as a result of labor disputes. As the Supreme Court noted in San Diego Teachers Association v. Superior Court, supra, at p. 11:

> PERB's responsibility for administering the EERA requires that it use its power to seek judicial relief in ways that will further the public interest in maintaining the continuity and quality of educational services.

Public school employers have a right to try to keep educational institutions functioning during work stoppages. The lack of adequate time to inform parents of impending work stoppages and to obtain substitute personnel will greatly hinder such efforts. Moreover, when parents have no advance notification of a strike, they cannot reasonably determine whether their minor children can safely be sent to school and cannot make alternative arrangements for their care during school hours should they so desire.

Thus, we find there is reasonable cause to believe that a "surprise" strike, that is, one which occurs without adequate notice to the employer, would constitute an unlawful pressure tactic in breach of the employee organization's duty to negotiate in good faith and, therefore, in violation of section 3543.6(c).[4]

Accordingly, we shall grant the District's request for injunctive relief for the limited purpose of requiring the Association to give adequate notice prior to engaging in a work stoppage.

At this juncture, we are unable to determine what, as a matter of law, would constitute "sufficient" notice. However, after weighing declarations submitted by the District and the Association's response, we feel that 60 hours would, on the facts of this case alone, provide sufficient notice to the District.

For the foregoing reasons, and based on the Board's broad statutory authority to fashion appropriate remedies,[5] we find

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[4]We need not, at this juncture, reach the question of whether there are circumstances in which a strike without notice would be justified.

[5]Section 3541.5(c) provides:

> The board shall have the power to issue a decision and order directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including but not limited to the reinstatement of employees with or without back pay, as will effectuate the policies of this chapter.

that in this case it would best serve the purposes of the Act to seek injunctive relief requiring the Association to provide adequate notice to the employer of its intention to engage in work stoppages. As the California Supreme Court stressed in San Diego Teachers Association v. Superior Court, supra, at p. 13, "the EERA gives PERB discretion to withhold, as well as pursue, the various remedies at its disposal." In this case, it is clear that it would best promote the purposes of the Act to exercise our injunctive relief power in this limited fashion until we are able, at a later date, to untangle the conflicting claims of the parties.

ORDER[6]

Based on the foregoing facts and the entire record in this matter, the Public Employment Relations Board hereby ORDERS that the General Counsel seek injunctive relief against the San Ramon Valley Education Association, CTA/NEA requiring it to give adequate notice to the San Ramon Valley Unified School District before engaging in a work stoppage.

Chairperson Hesse and Members Morgenstern and Burt joined in this Decision.

[6]This Decision and Order is a memorialization of the determination reached by the Board in its deliberations on October 7, 1984.